NOTES OF CASES.

Insurance Tax on Foreign-Bound Cargoes.—Stamp Taxes paid on insurance policies covering risks on exports destined for foreign ports were collected in violation of Federal Constitution, § 9, art. 1, and may be recovered. The question was raised in an action by the Thames & Mersey Marine Ins. Co. *v.* United States, 35 Supreme Court Reporter, 496, to recover stamp taxes paid under the war revenue act of June 13, 1898. The opinion reads in part: "Let it be assumed, as this court has said, that the insurance business, generically considered, is not commerce; that the contract of insurance is a personal contract—an indemnity against the happening of a contingent event. The inquiry still remains whether policies of insurance against marine risks during the voyage to foreign ports are not so vitally connected with exporting that the tax on such policies is essentially a tax upon the exportation itself. The answer must be found in the actual course of trade; for exportation is a trade movement, and the exigencies of trade determine what is essential to the process of exporting. The avails of exports are usually obtained by drawing bills against the goods; these drafts must be accompanied by the bills of lading and policies or certificates of insurance. It is true that the bills of lading represent the goods; but the business of exporting requires not only the contract of carriage, but appropriate provision for indemnity against marine risks during the voyage. The policy of insurance is universally recognized as one of the ordinary shipping documents. Thus, when payment is to be made in exchange for such documents, they are held to include not only a proper bill of lading, but also a policy of insurance for the proper amount. It cannot be doubted that insurance during the voyage is, by virtue of the demands of commerce, an integral part of the exportation; the business of the world is conducted upon this basis. The bill itself recites that the foreign commerce of the United States is now greatly impeded and endangered through the lack of such provision, and that it is deemed necessary and expedient that the United States shall temporarily provide for the export shipping trade adequate facilities for the insurance of its commerce against the risks of war. This is a very clear recognition of the fact that proper insurance during the voyage is one of the necessities of exportation. We must conclude that, under the established rule of construction, the tax as laid in the present case was within the constitutional prohibition."

Pullman Porter Not Railway Employee.—By the provisions of Federal Employers' Liability Act (U. S. Comp. Stat. 1913, § 8567), a common carrier may not exempt itself from liability to its employees. Pullman porters, on accepting employment, are required to release the company, and all railroad companies whose lines are used

by cars in which porters work, from liability for injuries. Plaintiff in Robinson *v.* Baltimore & O. R. Co., 35 Supreme Court Reporter, 492, in an action for injuries sustained while employed as porter on one of defendant's trains, claimed that his release was void under the above act. Mr. Justice Hughes, delivering the opinion of the court, states: "The substantial question is whether the contract of release was invalid under section 5 of the Employers' Liability Act. The application of this provision depends upon the plaintiff's employment. For the 'liability created' by the act is a liability to the 'employees' of the carrier, and not to others; and the plaintiff was not entitled to the benefit of the provision unless he was 'employed' by the railroad company within the meaning of the act. The service provided by the Pullman Company was, it is true, subject to the exigencies of railroad transportation, and the railroad company had the control essential to the performance of its functions as a common carrier. To this end the employees of the Pullman Company were bound by the rules and regulations of the railroad company. This authority of the latter was commensurate with its duty, and existed only that it might perform its paramount obligation. With this limitation, the Pullman Company supplied its own facilities, and for this purpose organized and controlled its own service, including the service of porters; it selected its servants, defined their duties, fixed and paid their wages, directed and supervised the performance of their tasks, and placed and removed them at its pleasure. We are of opinion that Congress used the words 'employee' and 'employed' in the statute in their natural sense, and intended to describe the conventional relation of employer and employee. It was well known that there were on interstate trains persons engaged in various services for other masters. Congress, familiar with this situation, did not use any appropriate expression which could be taken to indicate a purpose to include such persons among those to whom the railroad company was to be liable under the act."

Criminal Law—Continuance—Absence of Witnesses—Review of Discretionary Power.—Since the granting or refusal of a continuance is a matter largely in the discretion of the lower court, especially in a federal court, it is refreshing to find a case wherein a circuit court of appeals shows its willingness to review this discretionary power of the trial court. In Younge *v.* United States, 223 Fed. 941, we find Judge Waddell holding that "while not unmindful of the necessarily large discretion vested in trial courts in granting or refusing continuances, we are convinced, that in this case, under its peculiar circumstances, prejudiced error was committed against the accused in ruling him into trial." The facts are as follows:—Defendant, residing in the Southern district of West Virginia, was indicted at Clarksburg in the Northern district on October 9th. On October 28th, he appeared before a commissioner of the Southern